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Obtainable.—That, pending a mortgagee's suit to subject property of the mortgagor to the payment of a deficiency judgment, in which the mortgagor filed a cross-bill to set aside the sale of the mortgaged property for unfairness, or in the alternative for credit on the secured indebtedness of the fair value of such property, the property had passed into the hands of a purchaser for value without notice, constituted no bar to granting the alternative relief asked.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 1592, 1600-1603, 1605-1608; Dec. Dig. § 559.* 10 Va.-W. Va. Enc. Dig. 107.]

6. Mortgages (§ 559*)—Foreclosure—Setting Aside Sale—Relief Obtainable.—Where a mortgagee, who had purchased the mortgaged property at a trustee's sale for \$675, resold it for \$2,000, but this payable in monthly installments, and it was doubtful whether all of it could be collected, and a verdict approved by the court found the fair value to be \$1,800, this amount, rather than the amount for which the mortgagee resold the property, should be credited on the secured indebtedness; it having been determined that the sale was unfair.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 1592, 1600-1603, 1605-1608; Dec. Dig. § 559.* 10 Va.-W. Va. Enc. Dig. 107-10.]

Appeal from Law and Chancery Court of City of Roanoke.

Suit by J. T. Strickland against Sadie Rohrer, administratrix, and others. From a decree in favor of plaintiff, defendants appeal. Reversed and remanded.

Jackson & Henson, of Roanoke, for appellants.

Harvey B. Apperson and *Martin & Chitwood*, all of Roanoke, for appellee.

BANE *v.* ADAIR et al. (two cases).

Sept. 7, 1914.

[82 S. E. 734.]

1. Wills (§ 470*)—Construction—Consideration as a Whole.—The intention of testator is to be gathered from the whole will.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 988; Dec. Dig. § 470.* 13 Va.-W. Va. Enc. Dig. 781.]

2. Wills (§ 565*)—Property Bequeathed—Undivided Property.—A paragraph of a will giving to testator's wife his homestead and "all my money and personal property," and immediately thereafter to sisters and their children his "undivided" property, and then pro-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

viding for sale and division among his sisters, as "undivided" property, of land belonging to him individually, will, in view of the whole will, showing testator had in mind the distinction between property owned by him with another as partners and that owned by him alone, be considered as giving his individual personality only to his wife, and to the others his partnership personality; "undivided" not being used in the sense of "residue."

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1233-1238; Dec. Dig. § 565.* 13 Va.-W. Va. Enc. Dig. 796.]

3. Wills (§ 820*)—Money Legacy—Property Subject to Payment.

—The bequests to one of testator's individual personality, and to another of his partnership personality, being of the same character, so that if one is specific the other is also, each is proportionately liable for a money legacy to a third person, not made a charge on any particular portion of the estate.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 2114-2119, 2121; Dec. Dig. § 820.* 13 Va.-W. Va. Enc. Dig. 866.]

4. Wills (§ 506*)—Construction—Deductions—"Heirs."—In view of the fact that testator had sold and deeded land to the children of his sister, Mrs. F., for \$1,000, not paid, it is intended by the provision giving certain property to "my brother's daughter and my sisters or their children, less \$1,000, with five years' interest, to the F. Heirs," that \$1,000 shall be deducted, as payment to the estate of the debt of the F. children, from the share going to the F. family, though Mrs. F. be living at testator's death; the word "heirs" not importing that the provision for deduction should be effective only in case she predeceased him, but being used in the sense of children.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1090-1099; Dec. Dig. § 506.* 13 Va.-W. Va. Enc. Dig. 812.]

For other definitions, see Words and Phrases, vol. 4, pp. 3241-3265; vol. 8, pp. 7677, 7678.]

5. Partnership (§ 244*)—Administration of Partnership Property—

Action against Survivor.—The partnership personal assets of testator are to be administered by his administrator, who alone, in the absence of fraud, collusion, or refusal to sue, has the right to sue the surviving partner for a settlement, though, subject to their proportion of a money legacy, the will gives such assets to one set of persons, while giving testator's individual property to another.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 511; Dec. Dig. § 244.* 13 Va.-W. Va. Enc. Dig. 878, 880.]

Appeals from Circuit Court, Giles County.

Proceedings in the matter of the estate of A. J. Bane, deceased.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

From the decree, two appeals are taken, one by Mrs. A. J. Bane, the other by T. M. Bane, administrator; Adair and others being the appellees. Reversed and remanded.

Johnson & Izard, of Roanoke, *W. B. Snidow*, of Pearisburg, and *A. W. Whiteaker*, for appellant, *Mrs. Nannie Bane*. *H. C. Gilmer*, of Pulaski, for Bane, Adm'r.

Jackson & Henson, of Roanoke, *Williams & Farrier*, of Pearisburg, and *Guy F. Ellett*, for appellees.

LAKE et al. v. HOPE (two cases).

Sept. 7, 1914.

[82 S. E. 738.]

1. Insane Persons (§ 54*)—Personal Estate—Use by Committee.—Code 1904, § 1702, provides that the committee of an insane person shall take possession of his estate and shall apply the personal estate, or so much as is necessary, to payment of his debts, and the rents and profits of the residue of his real and personal estate and the residue of his personal estate, or so much as may be necessary, to the maintenance of such insane person and of his family, if any. Held, that while the court has supervision of the expenditures of a lunatic's committee from the personal estate, it is not a malfeasance in office for the committee to intrench on the corpus of the personal estate so far as is needed for the maintenance of the lunatic and his family, if any, without first obtaining permission from the court; the committee being authorized to expend the corpus of the personal estate in his discretion, subject to the future confirmation of his reports by the court, which should follow if the expenditures were bona fide and reasonably necessary under the circumstances.

[Ed. Note.—or other cases, see *Insane Persons*, Cent. Dig. §§ 76, 86; Dec. Dig. § 54.* 7 Va.-W. Va. Enc. Dig. 687.]

2. Insane Persons (§ 41*)—Committee—Services.—Where a lunatic was totally incapacitated for many months, and his committee was a physician and successfully treated and attended him, an allowance for the committee's services of \$100 per month, which was subsequently reduced to \$75, when the lunatic began to convalesce, was not excessive.

[Ed. Note.—For other cases, see *Insane Persons*, Cent. Dig. §§ 39, 63; Dec. Dig. § 41.* 7 Va.-W. Va. Enc. Dig. 692.]

3. Insane Persons (§ 65*)—Acts of Committee.—Where a lunatic had been in the habit of making weekly payments to certain of his children, who after the appointment of a committee objected to the committee's expenditures, whereupon the committee discontinued

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.